

## TERMS AND CONDITIONS

The Estimate, these Terms and Conditions and any Licence to Use (defined below) granted to the Agency form the entire agreement between the Photographer and the Agency (save for any fraudulent misrepresentation contained therein).

1. **DEFINITIONS.** For the purpose of this agreement "the Agency" and "the Advertiser" shall where the context so admits include their respective assignees, sub-licensees and successors in title. In cases where the Photographer's client is a direct client (i.e. with no agency or intermediary), all references in this agreement to both "the Agency" and "the Advertiser" shall be interpreted as references to the Photographer's client. "Photographs" means all photographic material furnished by the Photographer, whether transparencies, negatives, prints, digital files or any other type of physical or electronic material. "Licence to Use" means the licence granted to the Agency by the Photographer for the use of the Photographs on behalf of the Advertiser.
2. **COPYRIGHT.** The entire copyright in the Photographs is retained by the Photographer at all times throughout the world.
3. **OWNERSHIP OF MATERIALS.** Title to all Photographs remains the property of the Photographer. When the Licence to Use has expired the Photographs must be returned to the Photographer in good condition within 30 days.
4. **USE.** The Licence to Use comes into effect from the date of delivery of the Photographs. No use may be made of the Photographs before this date without the Photographer's express permission. The Licence to Use will automatically be revoked if full payment is not made by the due date or if the Agency becomes insolvent. The Licence to Use only applies to use by the Agency on behalf of the Advertiser and for the product stated on the Licence to Use. The Licence to Use shall not be assigned to any third party without the Photographer's permission. Accordingly, even where an 'all media' Licence to Use is granted, the Photographer's permission must be obtained before the Photographs are used for other purposes e.g. use in relation to another product or sublicensing through a photo library. Permission to use the Photographs for purposes outside the terms of the Licence to Use will normally be granted upon payment of a further fee, which must be mutually agreed (and paid in full) before such further use. Unless otherwise agreed in writing, all further Licences to Use in respect of the Photographs will be subject to these terms and conditions. The Licence to Use, in any event, shall expire at the end of the Time Period specified in the Estimate and/or the Licence to Use.
5. **EXCLUSIVITY.** Where agreed (and as specified in the Estimate and/or the Licence to Use), the Agency and Advertiser will be authorised to publish the Photographs to the exclusion of all other persons including the Photographer. Subject to such express agreement, the Photographer retains the right in all cases to use the Photographs in any manner at any time and in any part of the world for the purposes of advertising or otherwise promoting his work. After the expiry of any agreed exclusivity period indicated in the Licence to Use the Photographer shall be entitled to use the Photographs for any purposes.
6. **CLIENT CONFIDENTIALITY.** The Photographer will keep confidential and will not disclose to any third parties or make use of material or information communicated to him in confidence for the purposes of the commission, save as may be reasonably necessary to enable the Photographer to carry out his obligations in relation to the commission or as may be required by law.
7. **INDEMNITY.** The Photographer agrees to indemnify the Agency and the Advertiser against all reasonable expenses, damages, claims and legal costs arising out of any failure by the Photographer to obtain any clearances for which he was responsible in respect of third party copyright works, trade marks, designs or other intellectual property rights. The Photographer shall only be responsible for obtaining such clearances if this has been expressly agreed before the Photographs are taken. In all other cases the Agency shall be responsible for obtaining such clearances and will indemnify the Photographer against all reasonable expenses, damages, claims and legal costs arising out of any failure to obtain such clearances.
8. **PAYMENT.** Payment by the Agency for the Photographs shall be made within 30 days of the issue of the relevant invoice. If the invoice is not paid, in full, within 30 days the Photographer reserves the right to terminate immediately the Licence to Use and charge interest at the rate prescribed by the Late Payment of Commercial Debt (Interest) Act 1998 from the date payment was due until the date payment is made. If the Agency has any bona fide dispute with the amount of the invoice, it should raise this with the Photographer within 14 days of the issue of the relevant invoice. If no query is raised on the invoice within such 14 day period, it shall be deemed accepted by the Agency, and shall be paid in accordance with this clause.
9. **EXPENSES.** Where extra expenses or time are incurred by the Photographer as a result of alterations to the original brief by the Agency or the Advertiser, or otherwise at their request, or as a result of matters beyond the Photographer's reasonable control, the Agency shall promptly give approval to and be liable to pay such extra expenses or fees at the Photographer's normal rate to the Photographer in addition to the expenses on the Estimate as having been agreed or estimated.
10. **REJECTION.** Unless a rejection fee has been agreed in advance, there is no right to reject the Photographs on the basis of style or composition.
11. **CANCELLATION & POSTPONEMENT.** An Estimate is considered as agreed from the date of confirmation of the Estimate by the Agency and accordingly the Photographer will, at his discretion, charge a fee for cancellation or postponement covering the original estimate of expenses and one half of the Photographer's fee according to the Estimate.
12. **RIGHT TO A CREDIT.** If the box on the Estimate and/or the Licence to Use marked "Right to a Credit" has been ticked the Photographer's name will be printed on or in reasonable proximity to all published reproductions of the Photograph(s). By ticking the box on the Estimate and/or the Licence to Use the Photographer also asserts his statutory right to be identified as the copyright author in the circumstances set out in the Copyright, Designs and Patents Act 1988 or any amendment or re-enactment thereof.
13. **ELECTRONIC STORAGE.** Save for the purposes of reproduction for the licensed use(s), the Photographs may not be stored in any form of electronic medium without the written permission of the Photographer. Manipulation of the photographic images or use of only a portion of the images may only take place with the permission of the Photographer.
14. **APPLICABLE LAW.** This agreement shall be governed by the laws of England & Wales.
15. **VARIATION.** These Terms and Conditions shall not be varied except by agreement in writing.